

AMENDED IN ASSEMBLY MAY 22, 2000
AMENDED IN ASSEMBLY MAY 10, 2000
AMENDED IN SENATE JANUARY 18, 2000
AMENDED IN SENATE APRIL 27, 1999
AMENDED IN SENATE APRIL 15, 1999
AMENDED IN SENATE MARCH 25, 1999
AMENDED IN SENATE FEBRUARY 25, 1999

SENATE BILL

No. 126

Introduced by Senator Polanco

December 22, 1998

An act to add Section 208.7 to the Welfare and Institutions Code, relating to juvenile offenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 126, as amended, Polanco. State Incarcerated Youth Ombudsperson.

Existing law directs the Board of Corrections to conduct biennial inspections of each jail, juvenile hall, lockup, or special purpose juvenile hall that was used to confine a minor during the preceding calendar year.

This bill would create the Office of the State Incarcerated Youth Ombudsperson to provide assistance to persons who are at least 10 years of age, but not more than 21 years of age, who are within the jurisdiction of the juvenile court on the basis of criminal conduct, and who are detained in or confined

to juvenile ~~homes~~ *halls* and camps, facilities operated by the Department of the Youth Authority, or private facilities licensed to house more than 12 minors, in resolving issues related to their placement, care, or services.

The bill would provide that the Governor shall appoint the ombudsperson to a 4-year term. The bill would direct the ombudsperson to investigate incidents involving persons who are eligible to receive assistance from the ombudsperson. Among other things, the bill would require the ombudsperson to compile and make available to the Legislature specified data collected relating to these duties. The bill would authorize the ombudsperson to examine records and documents of any juvenile ~~home~~ *hall* or camp, a facility operated by the Department of the Youth Authority, or any private facility licensed to house more than 12 minors, that is used for the detention or incarceration of persons who are eligible to receive assistance from the ombudsperson. The ombudsperson would also have access to any record of a state or local agency that is necessary to carry out his or her duties.

The bill would provide that a court shall issue an order requiring compliance with a request of the ombudsperson, as specified, to any person who willfully obstructs or hinders the ombudsperson in the proper and lawful exercise of his or her duties, or who willfully misleads or attempts to mislead the ombudsperson in his or her inquiries or investigation.

The bill would also provide that the ombudsperson and his or her staff would have the same immunity from civil and criminal liability as a judge.

The Department of ~~Corrections~~ *or the Youth Authority*, a county probation department, *or a county welfare department, as applicable*, would be required to respond to the ombudsperson regarding action taken on recommendations of the ombudsperson or the reasons for not taking that action, thus establishing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do

not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 208.7 is added to the Welfare and
2 Institutions Code, to read:
3 208.7. (a) (1) There is hereby created the Office of
4 the State Incarcerated Youth Ombudsperson.
5 (2) The Governor shall appoint the State Incarcerated
6 Youth Ombudsperson. The appointment shall be for a
7 term of four years. The Governor shall make his or her
8 decision in consultation with a committee comprised of
9 at least seven but not more than 10 persons, including at
10 least one representative each of county probation
11 officers, the Department of the Youth Authority, the
12 Board of Corrections, juvenile court judges, and youth
13 advocacy organizations. The Director of the Youth
14 Authority shall select the committee members, the
15 majority of whom shall be representatives of youth
16 advocacy organizations.
17 (3) The position of State Incarcerated Youth
18 Ombudsperson shall be a full-time position and the
19 person appointed to that position shall not be employed
20 in any other capacity. The ombudsperson shall be a
21 person of recognized judgment, objectivity, and integrity
22 who is qualified by training and experience to analyze
23 problems of law enforcement, corrections
24 administration, and public policy. The ombudsperson
25 shall not do any of the following:
26 (A) Be actively involved in political party activities.
27 (B) Be a candidate for or hold other public office,
28 whether elective or appointive.

1 (C) Be engaged in any other full-time occupation,
2 business, or profession.

3 (b) The Office of the State Incarcerated Youth
4 Ombudsperson shall provide assistance to persons who
5 are at least 10 years of age but not more than 21 years of
6 age, who are within the jurisdiction of the juvenile court
7 pursuant to Section 602, and who are detained in or
8 committed to a juvenile—~~home~~ *hall* or camp, a facility
9 operated by the Department of the Youth Authority, or
10 a private facility licensed to house more than 12 minors.
11 The Office of the State Incarcerated Youth
12 Ombudsperson shall do all of the following:

13 (1) Disseminate information regarding the rights of
14 persons to whom the ombudsperson is authorized to
15 provide assistance pursuant to this section and regarding
16 the types of assistance available. ~~The information shall~~
17 ~~include a notice that conversations with the office may~~
18 ~~not be confidential.~~

19 (2) Investigate and attempt to resolve complaints
20 related to care, placement, or services made by or on
21 behalf of persons eligible to receive assistance from the
22 ombudsperson. The office shall investigate, upon
23 complaint or upon his or her own initiative, any incident
24 involving a person eligible to receive assistance from the
25 ombudsperson that occurred in a juvenile—~~home~~ *hall* or
26 camp, in a facility operated by the Department of the
27 Youth Authority, or in a private facility licensed to house
28 more than 12 minors if the incident comes within any of
29 the following descriptions:

30 (A) Is contrary or inconsistent with law or
31 Department of—~~Corrections~~ *the Youth Authority*
32 practice.

33 (B) Is inadequately explained when reasons should
34 have been revealed.

35 (C) Is inefficiently performed.

36 (D) Is unreasonable, unfair, or otherwise
37 objectionable, even though in accordance with law.

38 (3) Determine whether to investigate a complaint or
39 refer complaints to another agency for investigation. The

1 ombudsperson may decide not to investigate a complaint
2 or incident under either of the following conditions:

3 (A) The complaint is trivial, frivolous, vexatious, or
4 was not made in good faith.

5 (B) The complaint has been too long delayed to justify
6 present examination. ~~If~~

7 (4) *If* the office decides to investigate a complaint,
8 then it shall (A) notify the complainant of the intention
9 to investigate, (B) update the complainant on the
10 progress of the investigation, and (C) notify the
11 complainant of the final outcome. If the office declines to
12 investigate a complaint or continue an investigation, the
13 office shall notify the complainant of the reasons for
14 declining to investigate.

15 ~~(4)~~

16 (5) Document the number, source, location, and
17 nature of the complaints submitted to the office.

18 ~~(5)~~

19 (6) Compile and make available to the Legislature all
20 data collected over the course of the year, including, but
21 not limited to, the number of calls to the toll-free
22 telephone number, the number of complaints made, the
23 number of investigations performed by the office, the
24 number of referrals made, and the number of unresolved
25 complaints.

26 ~~(6)~~

27 (7) Collaborate with local ombudspersons.

28 (c) The ombudsperson ~~shall hire the necessary~~
29 ~~personnel to perform the functions of the office. He or she~~
30 shall have the power to do all of the following:

31 (1) *Hire the necessary personnel to perform the*
32 *functions of the office, and establish and administer a*
33 *budget for the office.*

34 (2) Investigate, upon complaint or upon his or her own
35 initiative, any incident involving a person who is eligible
36 to receive services provided by the ombudsperson that
37 occurred in a juvenile ~~home~~ *hall* or camp, at a facility
38 operated by the Department of the Youth Authority, or
39 in a private facility licensed to house more than 12 minors
40 that is used for the detention or confinement of any

1 person who is eligible to receive assistance from the
2 ombudsperson.

3 ~~(2)~~

4 (3) Adopt rules necessary for the discharge of the
5 duties of the office, including procedures for receiving
6 and processing complaints, conducting investigations,
7 and reporting findings.

8 ~~(3)~~

9 (4) Examine records and documents of any juvenile
10 ~~home hall~~ or camp, a facility operated by the Department
11 of the Youth Authority, or any private facility licensed to
12 house more than 12 minors that is used for the detention
13 or confinement of a person who is eligible to receive
14 assistance from the ombudsperson.

15 ~~(4)~~

16 (5) Enter and inspect without notice any juvenile
17 ~~home hall~~ or camp, the Youth Authority, or any private
18 facility licensed to house more than 12 minors used for the
19 detention or confinement of a person who is eligible to
20 receive assistance from the ombudsperson.

21 ~~(5) Subpoena~~

22 (6) *Notwithstanding Section 827, subpoena* any person
23 to appear, to give sworn testimony, or to produce
24 documentary or other evidence that is reasonably
25 material to an inquiry authorized pursuant to this section.

26 ~~(6)~~

27 (7) Undertake, participate in, or cooperate with
28 persons and agencies in conferences, inquiries, meetings,
29 or studies that may lead to improvements in the
30 functioning of the juvenile—~~homes halls~~ and camps,
31 facilities operated by the Department of the Youth
32 Authority, and private facilities licensed to house more
33 than 12 minors that are used for the detention or
34 confinement of a person who is eligible to receive
35 assistance from the ombudsperson.

36 ~~(7) Establish and administer a budget for the office.~~

37 (8) *Conduct any investigation he or she deems*
38 *necessary.*

39 (9) *Attempt to resolve complaints informally.*

1 (10) Submit a written plan to the relevant state or
2 county agency recommending a course of action to
3 resolve the complaint. If the ombudsperson makes a
4 written recommendation, the state or county agency
5 shall submit a written response to the ombudsperson
6 within 30 business days.

7 (11) Request the Legislature to take any necessary
8 legislative action reasonably related to the performance
9 of his or her duties.

10 (d) Notwithstanding any other provision of state law,
11 to the extent consistent with federal law, the
12 ombudsperson shall have access to any record of a state
13 or local agency that is necessary to carry out his or her
14 responsibilities, and may meet or communicate with any
15 person who is detained or confined in a juvenile-home
16 hall or camp, a facility operated by the Department of the
17 Youth Authority, or private facility licensed to house
18 more than 12 minors if that person is eligible to receive
19 assistance from the ombudsperson.

20 (e) The ombudsperson shall treat confidentially all
21 matters and the identities of the complainants and
22 witnesses. The ombudsperson shall not levy any fees for
23 the submission or investigation of complaints.

24 ~~(f) In his or her efforts to resolve complaints made~~
25 ~~pursuant to this section, the ombudsperson may do any of~~
26 ~~the following:~~

27 ~~(1) Conduct any investigation he or she deems~~
28 ~~necessary.~~

29 ~~(2) Attempt to resolve complaints informally.~~

30 ~~(3) Submit a written plan to the relevant state or~~
31 ~~county agency recommending a course of action to~~
32 ~~resolve the complaint. If the ombudsperson makes a~~
33 ~~written recommendation, the state or county agency~~
34 ~~shall submit a written response to the ombudsperson~~
35 ~~within 30 business days.~~

36 ~~(g)~~

37 (f) A toll-free telephone number shall be established
38 for the office. The toll-free telephone number shall be
39 posted next to each telephone that is located in a juvenile
40 home hall or camp, a facility operated by the Department

1 of the Youth Authority, or a private facility licensed to
2 house more than 12 minors, and that is authorized for use
3 by persons who are eligible to receive assistance from the
4 ombudsperson.

5 ~~(h)~~

6 (g) After investigation of any action, the
7 ombudsperson shall state the recommendations and
8 reasons if, in the ombudsperson's opinion, the
9 Department of ~~Corrections~~, or the Youth Authority, a
10 county probation department, or a county welfare
11 department, as applicable, should:

12 (1) Consider the matter further.

13 (2) Modify or cancel any action.

14 (3) Alter a rule, practice, or ruling.

15 (4) Take any other action.

16 Upon request of the ombudsperson, the Department of
17 ~~Corrections~~ the Youth Authority, or a county probation
18 department, or the county welfare department, as
19 applicable, shall, within the time period specified by the
20 ombudsperson, inform the ombudsperson about the
21 action taken on the recommendations or the reasons for
22 not complying with them. The ombudsperson may issue
23 a report concerning the compliance or noncompliance of
24 the department ~~or~~, the county probation department, or
25 the county welfare department, as applicable, with his or
26 her recommendations.

27 ~~The ombudsperson may request the Legislature to take~~
28 ~~any necessary legislative action reasonably related to the~~
29 ~~performance of his or her duties.~~

30 ~~(i)~~

31 (h) The ombudsperson and the staff of the office shall
32 have the same immunity from civil and criminal liability
33 as a judge of this state.

34 ~~(j)~~

35 (i) If any person willfully obstructs or hinders the
36 ombudsperson in the proper and lawful exercise of his or
37 her duties, or willfully misleads or attempts to mislead the
38 ombudsperson in his or her inquiries or investigation, the
39 court, on application of the ombudsperson, shall issue an
40 order mandating compliance with a request made by the

1 ombudsperson that is necessary and proper to carry out
2 his or her duties.

3 ~~(k)~~

4 (j) No person who files a complaint with the
5 ombudsperson shall be subject to any penalties, sanctions
6 or restrictions because of that complaint.

7 ~~(k)~~

8 (k) A letter to the ombudsperson from a person who
9 is eligible for services provided by the ombudsperson who
10 is detained or confined shall be forwarded immediately,
11 unopened, to the ombudsperson. A letter from the
12 ombudsperson to a person who is eligible to receive
13 assistance from the ombudsperson shall be immediately
14 delivered, unopened, to the person.

15 SEC. 2. Notwithstanding Section 17610 of the
16 Government Code, if the Commission on State Mandates
17 determines that this act contains costs mandated by the
18 state, reimbursement to local agencies and school
19 districts for those costs shall be made pursuant to Part 7
20 (commencing with Section 17500) of Division 4 of Title
21 2 of the Government Code. If the statewide cost of the
22 claim for reimbursement does not exceed one million
23 dollars (\$1,000,000), reimbursement shall be made from
24 the State Mandates Claims Fund.

